

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2896 of 2023

1. Anil Kumar Son of Bishnudeo Paswan, Resident of Village- Harouli, Police Station- Kusheshwar Asthan, District- Darbhanga. At Present Posted as Assistant Prakhand Teacher at Middle School, Pakahi, Police Station- Kusheshwar Asthan, District- Darbhanga.
2. Perna Kumari Wife of Anil Kumar, Resident of Village- Harouli, Police Station- Kusheshwar Asthan, District- Darbhanga. At Present Posted as Assistant Teacher Middle School, Samaila, Police Station- Kusheshwar Asthan, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Govt. of Bihar Patna.
2. The Principal Secretary, Department of Education, Govt. of Bihar Patna.
3. The District Education Officer, Darbhanga.
4. The District Programme Officer, Darbhanga.
5. The Block Education Officer, Kusheshwar Asthan, Darbhanga.
6. Panchayat Samiti, Kisheshwar Asthan, through Executive Officer-cum-Member Secretary Prakhand Niyojan Samiti.
7. Prakahand Panchayat Raj Officer, Member Secretary of Prakhand Niyojan Samiti, Kusheshwar Asthan, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jagdish Prasad Singh, Advocate
For the Respondent/s	:	Mr. Subhash Chandra Mishra (Sc 11)
		Mr. Pramod Kumar Singh, AC to SC-11

CORAM: HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT

Date : 05-09-2024

Heard learned counsel for the parties.

2. The petitioners who are the husband and wife and were working as Prakhand/Block Teachers at Adarsha Middle School, Harouli have challenged the transfer order dated 04.01.2023, issued by the Member Secretary, Prakhand Niyojan Samiti-cum-Block Panchayat Raj Officer, Kusheshwar Asthan,

Darbhanga whereby the petitioner No. 1 has been transferred to Middle School, Pakahi and the petitioner No. 2 has been transferred to the Middle School Samaila.

3. The petitioners contend that the service condition of the petitioners are governed by **the Bihar Panchayat Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceeding and Service Condition) Rules, 2020**, for short 'the rules 2020'.

4. By referring to Rule 15 of the Rules 2020, the petitioners contend that the teachers appointed under the aforesaid rules, generally are not transferred. However, there are some exceptional situations provided under the rules for effecting transfer. One such situation is Rule 15(iii) of the Rules, 2020 which provides that in the case of proved financial irregularities, moral turpitude or other serious charges, the teachers appointed under the Rules 2020 can be transferred for one time on administrative ground in the interest of school and students.

5. The petitioners contend that the petitioners are not involved in any financial irregularities, moral turpitude or other serious charges warranting transfer of the petitioners, as has been done by the respondent authorities by the impugned order.

6. The respondents have contested the case by filing a counter affidavit by the respondent Nos. 3 and 4.

7. In the counter affidavit filed by the respondent Nos. 3 and 4, the reason for transfer of the petitioners have been stated in paragraph Nos. 10, 11, 12 and 13 which is reproduced hereinbelow for ready reference:

"...10. That it is relevant to mention here that, the villagers of the Gram Panchayat Raj, Barouli filed several complaints before the Prakhanda Pramukh, Kusheshwar Asthan, Darbhanga alleging their in that, the local village teachers of the Middle School, Barouli have indulged in corrupt practices and politicizes the school in the name of cast, therefore the educational environment has become completely polluted. Not only villagers, the Mukhiya and member of Vidyalaya Shiksha Samitee have also made complaint against the petitioners and others.

11. That it is also relevant to mention here that, on the above-mentioned complaint of the Prakhanda Pramukh, Kusheshwar Asthan, Block Development Officer, Kusheshwar Asthan, Block Panchayati Raj Officer, Kusheshwar Asthan and one member of Prakhanda Teacher Employment Unit namely Sujeet Kumar jointly inspected the school on 23/12/2022 and found all

allegations true against the teachers who belongs to local village and requested to transfer of all seven teachers including these petitioners.

12. That is is respectfully stated and submitted here that after receiving the above-mentioned report, the Block Teacher Employment Committee, Kusheshwar Asthan in its meeting dated 04/01/2023 decided to transfer all seven teachers including these petitioners in another school who have indulged in corrupt practices and politicizes the school in the name of cast and polluted the educational environment of the school. The Member Secretary, Block Teacher Employment Committee-cum-Block Panchayati Raj Officer, Kusheshwarasthan in pursuance to the decision dated 04/01/2023 of Block Teacher Employment Committee issued the transfer letter to the seven teachers including the petitioners vide memo no. 01 dated 04/01/2023 (Annexure- 1 of the writ petition).

13. That it is also respectfully stated and submitted here that, the section 15(iii) of the Bihar Panchayat Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceeding and Service Condition) Rule, 2020 empower the employment committee to transfer the teachers on administrative ground. The said rule

postulates as follows "In the case of proved financial irregularities, moral turpitude or other serious charges, the member secretary of the recruitment unit shall transfer head master/teacher, for one time on administrative ground in the interest of school and students. The approval of this action shall be given by the Chairman of the committee constituted for the purpose of appointment..."

8. Raising the maintainability of the writ petition, learned counsel for the respondents has contended that since the petitioners are Block Teacher, the petitioners have an alternative remedy to approach the District Appellate Authority under the **Bihar State Teaching Institutions Teachers and Employees (Dispute Redressal and Appeal) Rules, 2020**. Learned counsel for the respondents, therefore, submits that the petitioners may be directed to approach the District Appellate Authority.

9. Learned counsel for the petitioners on the other hand by referring to paragraph 22 of the writ petition, has submitted that at the time of filing of the present writ petition, the District Appellate Authority, Darbhanga was not functioning.

10. The respondent Nos. 3 and 4 in the counter affidavit filed have not denied the contention of the petitioners raised in the writ petition that at the time of filing the writ petition filed, the District Appellate Authority, Darbhanga was not functioning.

11. The District Appellate Authority, Darbhanga is stated to be presently functioning.

12. Be that as it may, since the respondents have not disputed in the counter affidavit filed that the District Appellate Authority, Darbhanga was not functioning at the time, the present writ petition was filed and also having regard to the fact that the counter affidavit by the respondents have been filed, this writ petition is taken up for adjudication by this Court.

13. Upon hearing learned counsel for the parties and on perusal of the materials on record it appears that the petitioners were working as Prakhanda/Block Teacher at Adarsha Middle School, Harouli. While they were working as Prakhanda/Block Teacher at Adarsha Middle School, Harouli, the Respondent Authorities by the impugned order dated 04.01.2023, issued by the Member Secretary, Prakhanda Niyojan Samiti-cum-Block Panchayat Raj Officer, Kusheshwar Asthan, Darbhanga have transferred the petitioner Nos. 1 and 2 to the Middle School, Pakahi and to Middle School, Samaila respectively.

14. Since the applicability of the provisions of Rules 2020, have not been disputed, Rule 15 and 15(iii) of the Rules 2020 is reproduced hereinbelow for ready reference:

"...15. Transfer.- The posts of Head Master, Teacher and Instructor generally are not transferrable,

however for Headmasters and Teachers following exceptions may apply:-

15 (i) XXXXX

15 (ii) XXXXX

15(iii) In the case of proved financial irregularities, moral turpitude or other serious charges, the member secretary of the recruitment unit shall transfer head master/teacher, for one time on administrative ground in the interest of school and students. The approval of this action shall be given by the Chairman of the committee constituted for the purpose of appointment...

15 (iv) XXXXX"

15. On perusal of Rule 15 and 15(iii) it appears that the post of teacher, generally is not transferable. But an exception has been made under Clause (iii) thereof that such a transfer can be made for one time on administrative ground in the interest of school and students in the case of proved financial irregularities, moral turpitude or other serious charges.

16. On perusal of the stand taken by the State in the counter affidavit filed by the respondent Nos. 3 and 4, the relevant part of which has been quoted hereinabove, it appears that the impugned transfer order of the petitioners was issued because of several complaints filed by the villagers of the Gram Panchayat Raj, Barouli alleging that the local village teachers of the Middle School, Barouli have indulged in corrupt practices and politicized the school in the name of caste and, therefore, the education

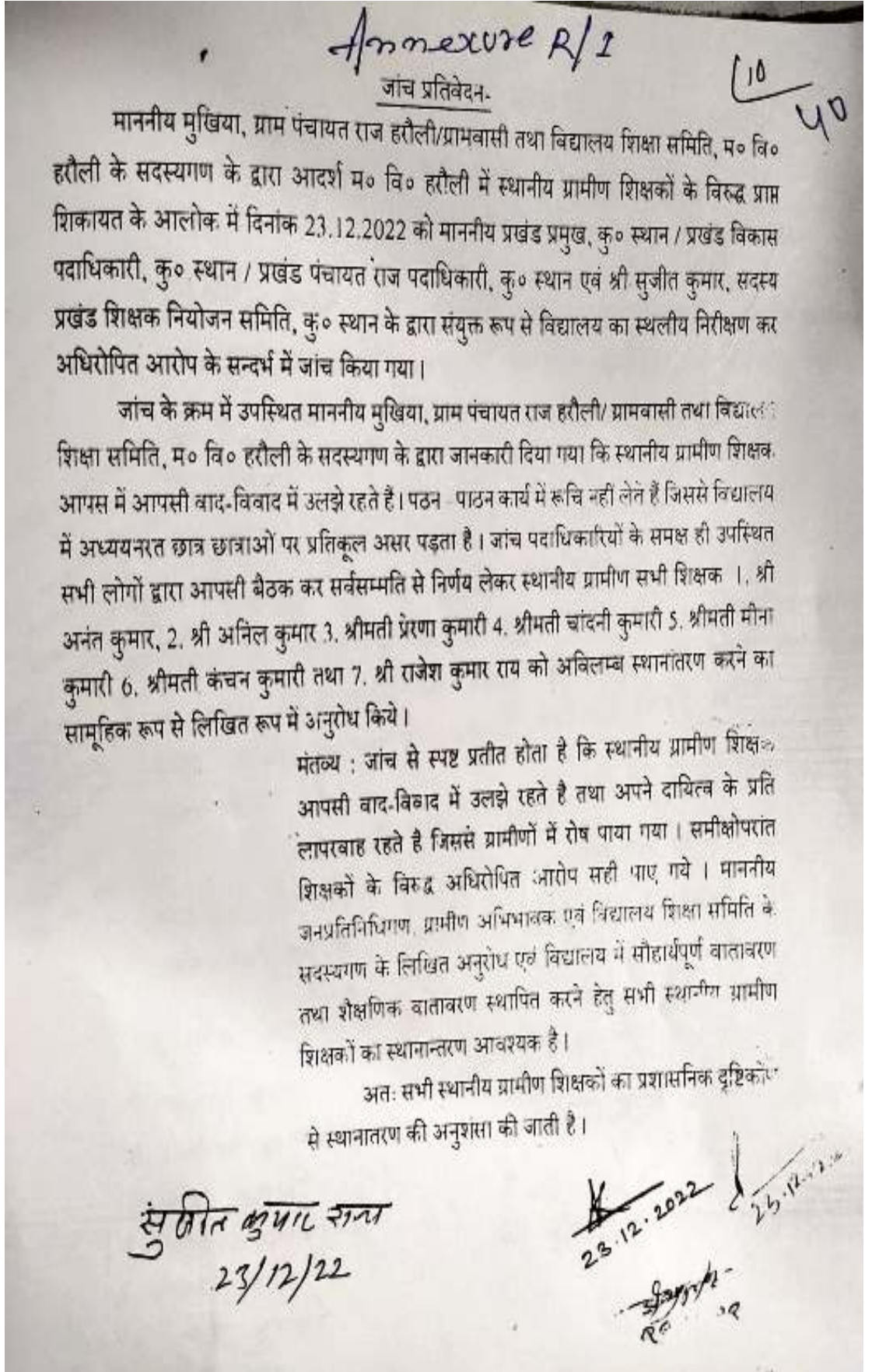
environment has become completely polluted. It further states that on such complaint having been received, one member of Prakhand Teacher Employment Unit, namely, Sujeet Kumar, jointly inspected the school on 23.12.2022 and found all the allegations to be true against all the teachers who belongs to local village and requested for transfer of all the teachers, including the petitioners.

17. It was on the basis of the report submitted by one Sujeet Kumar, Member of Prakhand Teacher Employment Unit on 23.12.2022 that the Block Teacher Employment Committee, Kusheshwar Asthan decided to transfer all seven teachers including the petitioners to another school in terms of Rule 15(iii) of the Rules 2020.

18. On examining the stand taken by the respondents in the counter affidavit filed, it has been found that the impugned order for transfer of the petitioners was issued on the basis of a report submitted by Sujeet Kumar, Member of Prakhand Teacher Employment Unit on 23.12.2022, that all the seven teachers of the local village including the petitioners are found to have indulged in corrupt practices and politicized the school in the name of cast.

19. The enquiry report dated 23.12.2022 has been annexed as Annexure-R/1 of the counter affidavit filed by the

respondent Nos. 3 and 4. The said enquiry report is reproduced hereinbelow for ready reference:



20. Learned counsel for the petitioners have provided the English translated copy of the enquiry report across the board, which has been perused by the Court.

21. It is evident from the enquiry report that enquiry was made by Prakhand Pramukh, Block Development Officer, Panchayati Raj Officer and one Sujeet Kumar; a Member of Prakhand Teacher Employment Unit. On perusal of the enquiry report it appears that on 23.12.2022, four members of the Enquiry Committee, namely, Prakhand Pramukh, Block Development Officer, Panchayati Raj Officer and one Sujeet Kumar; a Member of Prakhand Teacher Employment Unit had visited the Adarsha Middle School, Harouli. During the enquiry, the Committee interacted with the Mukhiya of the Panchayat Harouli, villagers and members of the School Shiksha Samiti, who told the Enquiry Committee that the local teachers are involved in gossiping, they don't take interest in teaching, which adversely affects the students studying in school.

22. On the basis thereof, the Enquiry Committee found the charges levelled against the petitioners to have been proved, and, therefore, taken a unanimous decision to transfer the petitioners on administrative ground. It is thus, evident that the Enquiry Committee had reached a conclusion on the basis of the

interaction, the Enquiry Committee had with the Mukhiya of the panchayat Harouli, villagers and members of the School Shiksha Samiti.

23. No opportunity was given to the petitioners to rebut the allegations made against them. Enquiry report is, therefore, based on one sided information given by the villagers, Mukhiya and members of the School Shiksha Samiti, whose version was not subjected to contest by the petitioners. The findings recorded in the Enquiry report, therefore, can hardly be said to be a finding recorded proving any misconduct by the petitioners, having regard to the fact that the petitioners were not given an opportunity to rebut the allegations made against them.

24. Rule 15(iii) of the Rules 2020 permits transfer of teacher for one time on administrative ground in the case of proved financial irregularities, moral turpitude or other serious charges. Though the allegations against the petitioners may be of a serious in nature, but the finding recorded by the Enquiry Committee without providing an opportunity to the petitioners to rebut/contest the allegations made against them, can not be accepted as a report indicating that the charges levelled against the petitioners have been proved.

25. Since the transfer under Rule 15(iii) of the Rules 2020 can be made for one time on administrative ground in the case of proved financial irregularities, moral turpitude or other serious charges, the impugned transfer of the petitioners on the basis of the enquiry report 23.12.2022, can not be said to have been made within the permissible limit of Rule 15(iii) of the Rules 2020.

26. That apart, it is a settled position of law that though order of transfer are not ordinarily interfered with, by the Court, in the absence of strong and compelling ground. But whenever an order of transfer is found penal or stigmatic in nature, such as in the instant case which has been made on the basis of an adverse finding recorded by the Enquiry Committee without providing an opportunity of rebutting/contesting the allegations made against the petitioners, such a transfer order ought to be interfered with, if no opportunity of hearing has preceded such an order of transfer before the transfer order was made.

27. For the reasons indicated hereinabove, the impugned transfer order dated 04.01.2023, issued by the Member Secretary, Prakhand Niyojan Samiti-cum-Block Panchayat Raj Officer, Kusheshwar Asthan, Darbhanga, insofar as the petitioners are

concerned, in the view of this Court, is not sustainable and the same is hereby set aside and quashed.

28. The writ petition is allowed and disposed of.

(Nani Tagia, J)

Nishant/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.09.2024.
Transmission Date	NA